

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

LEAH L. HARRIS,)	Civil Action No.: 4:03-3090-RBH
)	
Plaintiff,)	
)	
vs.)	
)	
FLORENCE COUNTY SHERIFF JAMES)	ORDER
GREGG, JR. AND THOMAS TIMMONS,)	
PERSONALLY AND IN HIS CAPACITY)	
AS AN EMPLOYEE OF THE FLORENCE)	
COUNTY SHERIFF'S OFFICE,)	
)	
Defendants.)	
)	

I. PROCEDURAL BACKGROUND

The plaintiff, through counsel, filed this action on September 26, 2003, alleging discrimination in violation of Title VII based on the plaintiff's sex, assault and battery against her former supervisor, and retaliation for participation in a Title VII investigation. On November 5, 2004, defendants filed a motion for summary judgment. Plaintiff has failed to respond to this motion.

On November 1, 2004, a hearing was scheduled by the Court on several pending motions including defendants' motion to compel discovery and motion for summary judgment. Neither plaintiff nor her counsel appeared for the hearing. On November 5, 2004, United States Magistrate Judge Thomas E. Rogers, III, issued an Order instructing the plaintiff to respond to the interrogatories and request for production within ten (10) days of the date of the Order. Defendants assert that the plaintiff has failed to file any response to the discovery requests as ordered by the Court. Magistrate Judge Rogers also granted defendants' motion for an extension of time to file dispositive motions and directed

the Clerk to mark the original motion for summary judgment filed September 20, 2004, as moot, and re-file the motion for summary judgment as of November 5, 2004. The Clerk was also directed to send a copy of the motion to plaintiff's counsel along with the Order. Plaintiff was given thirty (30) days to respond to the motion for summary judgment. Plaintiff failed to respond to the motion for summary judgment.

Defendants filed a motion to dismiss for failure to prosecute on December 10, 2004, and requested an award of appropriate costs and fees for the filing of the motion and the motion to compel.

The undersigned issued an Order on May 3, 2005, giving plaintiff five (5) days to respond to the motion or the case may be dismissed for failure to prosecute. Plaintiff has failed to respond to the motion for summary judgment, motion to dismiss, or the Court's Orders to respond.

II. RULE 41(B) DISMISSAL

A complaint may be dismissed pursuant to Rule 41 (b) of the Federal Rules of Civil Procedure for failure to prosecute and/or failure to comply with orders of the court. Ballard v. Carlson, 882 F.2d 93 (4th Cir. 1989), cert. denied 493 U.S. 1084 (1990) and Chandler Leasing Corp. v. Lopez, 669 F.2d 919 (4th Cir. 1982). In considering whether to dismiss an action pursuant to Rule 41(b), the court is required to consider four factors:

- (1) the degree of plaintiff's responsibility in failing to respond;
- (2) the amount of prejudice to the defendant;
- (3) the history of the plaintiff in proceeding in a dilatory manner; and,
- (4) the existence of less drastic sanctions other than dismissal.

Davis v. Williams, 588 F.2d 69 (4th Cir. 1978).

The plaintiff has presented a pattern in this case of proceeding in a dilatory fashion. Plaintiff

has failed to respond to discovery requests, failed to appear for the noticed deposition, failed to appear at a properly scheduled hearing and failed to respond to the orders of the Court. The defendants have had to file motions, prepare and appear at a hearing that plaintiff or her counsel did not appear. Plaintiff, through her counsel, has received notice of the Court's deadlines and has received Orders to respond and plaintiff has continually failed to respond. Plaintiff and her counsel have been given ample opportunity to respond to the motion for summary judgment, motion to dismiss, and discovery requests.

III. CONCLUSION

Based on plaintiff's noncompliance with the Rules and Orders of the Court, it is **ORDERED** that the defendants' motion to dismiss for failure to prosecute is hereby **GRANTED**. Accordingly, this action is dismissed pursuant to Fed. R. Civ. Proc. 41(b). Further, the defendants request for costs and fees associated with filing this motion and the motion to compel is **DENIED**.

AND IT IS SO ORDERED.

s/ R. Bryan Harwell

R. Bryan Harwell
United States District Judge

Florence, South Carolina
May 18, 2005